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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,864	11/24/2003	Glenn F. Jorgensen	4436.76438	5169
24978	7590	11/15/2007		
GREER, BURNS & CRAIN 300 S WACKER DR 25TH FLOOR CHICAGO, IL 60606				
			EXAMINER HOOK, JAMES F	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 11/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**Office Action Summary**

Application No.

10/720,864

Applicant(s)

JORGENSEN, GLENN F.

Examiner

James F. Hook

Art Unit

3754

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10 and 21-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, and 21-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 10, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zaydel in view of Figure 1 of applicants specification which is prior art. The patent to Zaydel discloses the recited plug assembly where the use of such as a tube plug is merely intended use where the plug of Zaydel is capable of use with tubes as well, comprising an elastomeric tube plug 20' having a generally hollow body elongated along an axis, a rounded front end, open rear end leading to a central axially extending blind hole having a predetermined internal diameter, a non expandable insert member 10 having a diameter greater than the blind hole, wherein inserting the insert member into the blind hole results plug body enlarging, the insert has outer annular ribs near 12 which can be formed in a Christmas tree configuration which is a reverse taper type serration, an enlarged head 14 limits the insertion of the inserting member into the plug. The patent to Zaydel discloses all of the recited structure with the exception of forming the plug with a constant diameter smooth outer surface with a blind hole that has a constant internal diameter extending substantially along the length of the hole. Applicants Prior Art Figure 1 (Fig 1) discloses the recited plug member which is designed for use with a tube that is provided within the opening in a wall member,

where the plug member 20 is formed with a rounded front end at the end of a constant diameter smooth outer surface 22 and having a constant internal diameter extending substantially along the length of the hole. It would have been obvious to one skilled in the art to modify the plug member of Zaydel to be of a shape that would include a smooth outer surface with a constant diameter and a constant internal diameter extending substantially along the length of the hole as suggested by Fig 1, where such is an equivalent form of a plug member used to plug a hole in a wall including when a pipe is provided in the hole where one skilled in the art would recognize the equivalence of the same type of plug member and would only require routine skill to substitute one type of plug member for another.

Claims 1-4, 21, 22, 25-29, and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prior Art Figure 1 of applicants specification in view of Zaydel. Fig 1 discloses all of the recited structure with the exception of providing an insert to hold the plug in place, where the insert has the structure of ribs on the outside thereof. It is considered merely a choice of mechanical expedients to form the members of any color where such would only require routine skill in the art and is merely a choice of mechanical design to form the plug and insert of any desired color. It would have been obvious to one skilled in the art to provide the plug in Fig 1 with an insert to hold the plug into contact with the hole or pipe wall to insure such stays in place where the insert can be formed with an outer surface having ribs thereon as suggested by Zaydel where such would provide a positive contact of the plug member with the pipe or hole to insure

such is not easily removed thereby preventing failure of the device and inherently increasing the amount of pressure the plug could see without displacing from in the tube.

Claims 1-8, 10, and 21-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kask in view of Prior Art Figure 1 of applicants specification and Zaydel. The patent to Kask discloses the recited plug assembly where the use of such as a tube plug is merely intended use where the plug of Kask is capable of use with tubes as well, comprising an rubber tube plug 14 having a generally hollow body elongated along an axis, a front end, open rear end leading to a central axially extending blind hole having a predetermined internal diameter, a non expandable insert member 30 having a diameter greater than the blind hole, wherein inserting the insert member into the blind hole results plug body enlarging, the insert has a hole 40 for use of a tool and is formed of hard plastic, an enlarged head above 38 and below reference number 30 limits the insertion of the inserting member into the plug, the seal between the insert and the blind hole is seen in the figures to be a tight fit and would inherently result in a water tight fit, and the insert has at least one rib formed by the enlarged end. The patent to Kask discloses all of the recited structure with the exception of forming the insert of a different color, forming the end of the plug with a rounded end, forming the plug with a constant diameter smooth outer surface with a blind hole that has a constant internal diameter extending substantially along the length of the hole, forming the insert with a plurality of ribs with a reverse taper, and forming the plug of an elastomeric material. It would have been obvious to one skilled in the art to modify the plug member

of Kask to be of a shape that would include a smooth outer surface with a constant diameter and a constant internal diameter extending substantially along the length of the hole as suggested by Fig 1, where such is an equivalent form of a plug member used to plug a hole in a wall including when a pipe is provided in the hole where one skilled in the art would recognize the equivalence of the same type of plug member and would only require routine skill to substitute one type of plug member for another. The use of different color materials to form the insert and plug are considered an obvious choice of mechanical design where one skilled in the art would have found it obvious to change the colors to be more pleasing to the eye of the user and allow for more easily seeing the insert. The patent to Zaydel discloses the structure set forth above and it would have been obvious to one skilled in the art to make the plug out of any type of rubbery material including elastomeric material where such is a known material used for such plugs, to form the end of the plug as a rounded end where Zaydel discloses two shaped ends one which is shown also in Kask, and a second configuration having a rounded end thereby teaching the equivalence of using different shaped ends where such would make insertion easier, and to provide the insert with reverse taper ribs to prevent the insert from coming out of the plug easily thereby preventing failure as suggested by Zaydel, and thereby saving money.

***Response to Arguments***

Applicant's arguments with respect to claims 1-8, 10, and 21-34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to Visor and Antonio disclosing state of the art plugs.

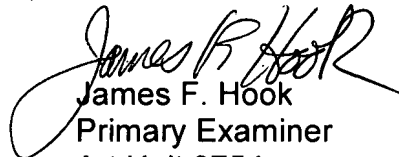
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
James F. Hook  
Primary Examiner  
Art Unit 3754

JFH